

Internal Revenue Service

Department of the Treasury **NO POSTEST RECEIVED**
Please send copies to District

Washington, DC 20224

Date 1/13/94

Surname [REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the laws of the State of [REDACTED] on [REDACTED], for the purpose of promoting [REDACTED] beliefs through hot-air ballooning. Specifically, your purposes are to provide for evangelical, educational and charitable purposes all for the public and spiritual welfare of the residents of [REDACTED] County, [REDACTED], and surrounding areas, including but not limited to:

- a. The assistance, education, and guidance of all willing individuals in the [REDACTED] County, [REDACTED] area.
- b. To provide for the improvement of the physical, mental and moral conditions of the residents of the county.
- c. To reach non-Christians with the Gospel, people without a spiritual identity, people seeking spiritual answers to life's meaning who are troubled and might otherwise not be reached.
- d. For advancing, promoting and administering of evangelical, charitable and educational aims on it's own behalf and on it's own initiative or as agent or representative of others.
- e. Directing persons to other Christian organizations and services such as Christian counseling, schools, doctors, lawyers, etc., for the good of the community at large.
- f. To aid and assist individuals, Christian organizations, corporations, associations or institutions engaged in any one or more of the purposes above stated.

g. To unify educational, economical, social, and spiritual agencies and institutions and mobilize their resources to help produce a better quality of life for the poor in the community.

You are not a membership organization. Your board of directors shall be comprised of no less than three persons. The present board of directors consists of [REDACTED].

[REDACTED], [REDACTED], and [REDACTED]. Pursuant to your by-laws, [REDACTED] shall be director for life. You state she shall be director for life because she is the founder and the visionary behind your creation. All other directors serve a one year term.

[REDACTED] has engaged in ballooning for the last [REDACTED] years. She has completed pilot training and has received a private pilot certificate from the Federal Aviation Administration (FAA). She proposes to complete her commercial rating in the fall of [REDACTED] or in the spring of [REDACTED]. Two of the other board members have engaged in ballooning since [REDACTED]. [REDACTED] is a commercial pilot for [REDACTED] and [REDACTED] is crew chief for her husband, [REDACTED], who is also a commercial pilot for [REDACTED]. Both fly for advertising and a for-profit business. You state that each director was chosen to the board for their special qualities in areas other than ballooning and for the different churches they represent.

Your sources of support will be from fees from passengers, donations from individuals, churches and businesses, and grants from private foundations. Your fund raising activities will consist of visiting community leaders expressing interest in furthering Christian evangelism and missionary work through the use of hot-air ballooning and applying for grants through local foundations and church organizations.

Your activities will consist of providing hot-air balloon flights and tether flights. You state that the different types of trips will vary due to FAA regulations and weather conditions. For example, a balloon can only be flown just after sunrise and two to three hours before sunset. You state you may have short local trips or long term trips which may involve a weekend to an out of town location. You state you propose to have morning and evening flights done locally. An average flight will last between forty-five (45) minutes up to two (2) hours depending on windspeed, direction, and landing site availability. You state your balloon will carry two to three (2 - 3) passengers, excluding the pilot, depending on the size and weight of the individuals and the outside temperature.

[REDACTED]

You indicate that a balloon can be tethered for a longer period of time than a free-flight, as it can be done after dark. A tethered balloon has more stringent wind requirements than a free-flight. On a tether flight, 3 to 5 passengers are ascended in the balloon to the extent of the tether lines for approximately five (5) minutes, the balloon lands and exchanges for another group and repeats the flight in the same manner. This is generally done for a large group or party.

For each flight a pilot requires at least 3 crew members; one to control the crownline and two to control the throat of the balloon on inflation. After inflation, the crew changes jobs, as follows: one drives the chase vehicle, one navigates with road maps, and one spots and communicates by radio with the balloon. It also requires the same 3 crew members to deflate and pack the balloon at the end of the flight. For tether flights a minimum of 5 crew members or more are required. Crew members are trained by their pilot and/or the pilot's regular crew chief some of whom will attend hot-air balloon ground school.

You will charge \$[REDACTED] per person per flight or \$[REDACTED] per couple. You indicate that the fees are based upon the local market rate. The fee covers the direct cost of insurance, fuel and equipment maintenance. Any monies generated over and above the direct costs, will remain in your organization to cover the indirect and administrative costs.

You also indicate that you propose to attend rallies and events that are held at different locations and different times of the year across the country and around the world. These rallies and events provide a variety of activities, the primary activity being the morning and evening balloon flights situated for viewing by the public. You indicate that on the weekend of [REDACTED], you flew at a local balloon rally with an estimated attendance of over [REDACTED] people, who came to watch [REDACTED] hot-air balloons launch. You state that the [REDACTED] people does not include the people at the areas over which you flew. You state you have received many calls, cards and letters commenting on the balloon and sharing the impact it made upon them. You state that through this activity you have already experienced exposure to a greater number of people than a church or like organization due to the ability to cover a larger area in a short time. You further state that the local newspaper has printed photographs of the balloon, adding to the exposure.

You state that your hot-air balloon flights will differ from those of recreational for-profit organizations for the following reasons:

1. You were formed to be a charitable outreach ministry to

spread the gospel and promote evangelism. Your desire is to spread the word of God that "Jesus Loves You."

2. Your balloon's design is a basic color blue and has a white dove carrying an olive branch, a rainbow, and a large red heart on one side, with the other side reading "Jesus Loves You" on it, all symbolizing Christian beliefs. You indicate that there are no other recreational balloons like yours and according to the area balloon manufacturer, there are none displaying any Christian symbols.

3. The flight itself begins with prayer and continues with in-flight discussions revolving around Christianity. The flight ends with prayer and the distribution of Christian materials to receptive passengers and spectators.

4. Recreational pilots generally fly passengers for the income or positions in competitive rallies and events, whereas you fly for the purpose of the impact of spreading the message of "Jesus Loves You." You also state that recreational pilots do not engage in the prayer, religious discussions, and distributions of religious material.

5. Your pilot/director has a counseling and pastoral degree, which will be beneficial to promoting your ministry. You also require all your pilots and crew members to be Christians and have a basic Biblical knowledge. This, you state, is unlike any other recreational balloon.

Your activities for the future include pilot training and community activities. In your letter dated [REDACTED] you state that you may implement pilot training in the next 5 to 7 years. Training would be open to anyone interested. Fees would be charged at the current market rate to those not interested in staying with the organization. This would generate another source of funds and/or pilots to carry out your mission. Your community activities will be providing flights, tether rides or informational programs on ballooning for other activities and organizations such as: Make a Wish Foundation, Big Brothers/Big Sisters, 4-H, area churches, retirement homes, and other like organizations. Your response to our observation that flight activities and community activities appeared to be one and the same was not clear. You stated that flight activities and community activities could sometimes involve the same kind of people, but community activities could be done without flying the balloon, such as seminars and interviews about the balloon, as well as the ministry's goals and visions. You also stated that at the present time you had no intentions of entering into any contracts or agreements with any of the organizations mentioned above. You also stated that fees charged would depend largely on

that particular organization's desires and ability to pay.

You ordered your balloon on [REDACTED]. It was delivered on [REDACTED]. The balloon was purchased with a personal loan from [REDACTED], your founder and president. The purchase price for the balloon was \$[REDACTED]. Repayment of the loan will be dependant upon the approval of your tax exempt status. If approved, repayment may be in whole or in part by contributions made to you, or possibly may be a personal contribution to the ministry.

You state that the percentages of time and use of funds are as follows:

| <u>Activity</u> | <u>% of Time</u> | <u>% of Funds</u> |
|--------------------|------------------|-------------------|
| Balloon flights | ■% | ■% |
| Community Activity | ■% | ■% |
| Fund raising | ■% | ■% |
| Administration | ■% | ■% |

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for, among others, charitable or educational purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in part, that the term "charitable" includes advancement of religion.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides

that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Revenue Ruling 77-366, 1977-2 C.B. 192, provides that a nonprofit organization that arranges and conducts winter-time ocean cruises during which activities to further religious and educational purposes are provided in addition to extensive social and recreational activities is not operated exclusively for exempt purposes and does not qualify for exemption.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), held, in part, that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

Living Faith, Inc. v. Commissioner of Internal Revenue, T.C. Memo 1990-484, 9/19/90, held that the taxpayer's vegetarian restaurants and health food stores which advocated religious beliefs did not qualify for tax exempt status. The dissemination of literature and information about the Seventh-Day Adventist religious beliefs on diet and health was peripheral and incidental to the substantial commercial purposes of the enterprise.

Living Faith, Inc. was created for charitable purposes within the meaning of section 501(c)(3) of the Code. Its board of directors was comprised of Seventh-Day Adventist Church deacons and ordained elders.

The organization's activities consisted of operating two vegetarian restaurants and health food stores that were open to the public. The meal and food prices were similar to other restaurants and food stores. A requirement for operation was that there be Seventh-Day Adventist management and a good working relationship with the local Seventh-Day Adventist Church.

Profits were used to expand its facilities in order to provide other health programs. One Saturday a month the organization provided free meals, and people attending were given the opportunity to sample vegetarian cuisine, to peruse Seventh-Day Adventist literature, and to obtain informal answers to questions about the Seventh-Day Adventist Church. The organization offered a cooking school every few months which was open to the public and promoted the vegetarian lifestyle. The organization often gave free meals to the needy who did work in return. Each work day began with a devotional talk by a staff member, as well as hymn singing and a Bible reading. Bible seminars were conducted in the restaurant each Monday evening after closing. Religious literature was made available to customers. As a result of the organization's evangelistic work, 10 - 12 people joined Seventh-Day Adventist Churches.

Retreat in Motion, Inc. v. Commissioner of Internal Revenue, T.C. Memo 1984-315, 6/21/84, held that a traveling ministry that used a bus to transport and sleep its members is not exempt under section 501(c)(3) of the Code. The bus was not used exclusively for exempt purposes and the trips to Disney World, Washington and the Smokey Mountains served two purposes: religious and recreational. The court further held that the organization's substantial recreational activities were not merely incidental to religious activities.

Retreat in Motion was created for charitable purposes within the meaning of section 501(c)(3) of the Code. Its board of directors was composed of 15 persons, each of whom was a member of one of three United Methodist churches.

The organization's program consisted of taking church-related groups on three- to five-day trips and providing an environment which was more conducive to the sharing of the Christian faith. The bus trips constituted the organization's entire program, with the only other activities ancillary such as fund raising, administration and bus maintenance. Trips were taken to vacation spots around the country where the groups engaged in the typical tourist sightseeing and touring activities. Also, each trip was accompanied by a trained program coordinator who would lead the group in singing, faith exploration, discussion and worship. The premise of the organization's devotional program was that religious conversation and study were encouraged at any time. Additionally, there were formal devotions on a daily basis. The organization estimated that formal devotions were about one hour daily, religious singing two to four hours daily, faith explanations anywhere from 30 minutes to several hours daily, depending upon individual needs, and worship services 35 to 50 minutes on Sunday or the last day of the trip. All of the formal worship activities were

attended by all of the trip participants; the informal periods of sharing normally included everyone on the trip.

The court stated, "We are presented here with a factual situation akin to any trip for sightseeing and recreational purposes where the group members are compatible in nature. The fact that the element of compatibility might be religiously oriented and therefore related to exempt activities cannot serve to provide a gloss of exemption over that which is recreational in nature."

You are similar to the organizations described in the revenue ruling and court cases cited above in that even though your stated purpose is charitable, to promote [REDACTED] beliefs, your operational activity promotes other than charitable purposes. Your activities promote your founder's personal private recreational and commercial interests. Your proposed dissemination of religious literature and in-flight religious discussions, to receptive passengers, and the promotion of your religious message through the inscription on the balloon is accompanied by substantial recreational and commercial flight activity. Like those organizations, the amount of time, energy, and other resources devoted to recreational flights and the manner in which you are operated demonstrate that your activities further substantial non-exempt purposes.

You were created and are controlled by [REDACTED]. Your primary activity consists of providing hot-air balloon flights and tether flights to the general public. Your trips will be from five (5) minutes to two (2) hours depending on the type of flight. Each flight will accommodate two to three (2-3) passengers and up to five (5) passengers in the tether flights. You will charge fees comparable to those charged by for-profit recreational corporations. You will keep monies generated over and above the direct costs to cover indirect and administrative costs.

You will also attend rallies and events held in the United States and around the world. You state that the purpose of your flight activities is to provide more exposure to the message inscribed on your balloon, "Jesus Loves You."

Your community activities relate primarily to your flight activities. Therefore, based on your stated percentages of time and funds used for your activities, approximately [REDACTED] percent ([REDACTED]%), of your time and funds will be dedicated to hot-air ballooning. The remaining [REDACTED] percent ([REDACTED]%) of your time and funds will be dedicated to fundraising and administration.

You have stated that the only difference between your activities and those of other recreational for-profit organizations is your desire to spread the word of God that "Jesus Loves You," the color and Christian symbols of your balloon, beginning and ending flights with prayer, in-flight religious discussions, and that your pilots and crew members are Christians. Your in-flight religious discussions were not discussed in detail.

Based on all the facts and circumstances described above and in the case file, we conclude that your primary activity, hot-air ballooning, is conducted in a regular recreational and commercial manner and is furthering your creator's private interests. This is true even though your activities may also promote Christian beliefs. Therefore, you are not operated exclusively for an exempt purpose as required under section 1.501(c)(3)-1(c)(1) of the regulations. Your activities serve private rather than public interests contrary to the requirements of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Accordingly, you do not qualify for tax exempt status under section 501(c)(3) of the Code.

You are required to file federal income tax returns on Form 1120 for each year that you have been in existence.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, if you have any questions concerning reporting requirements, please contact your key District Director.

Sincerely,

[REDACTED]

[REDACTED]
Chief, Exempt Organizations
Rulings Branch 1

cc: Cincinnati
Attn: EO Group

[REDACTED]